OGC HAS REVIEWED. Approved For Release 2002/08/26 2004/18/09/78-04718A000600210139-1

20 November 1953

MEMORANDUM FOR: Executive Officer, DD/A	
FROM : Office of General Counsel	
SUBJECT : Audit Exception B-181 -	5X1A9a
1. Mr. Houston has referred to me your request for a reexam-	
ination of our memorandum of 30 October 1953, same subject, with a view to providing more guidance.	
2. This office has been unable to discover any statutory procedure or theory under which the Agency could proceed for financial recoupment against the officer responsible for the "personnel gamble" in this case. If it were decided by appropriate officials of the Agency that the responsible person had been guilty of negligence, discipline could be administered. This could range from reprimand, through suspension up to 90 days, to termination depending on the degree of negligence. The Agency cannot, however, require the responsible person to repay to the Agency the loss caused by his negligence unless the responsible person volunteers to do so.	
3. Determination of negligence and the degree thereof must be based on the facts and circumstances at the time of action viewed in the light of reason and not on assumption from a review after the fact. It is easy to assume from an unsatisfactory outcome that there must have been negligence. It is very difficult to determine what the mythical reasonable and prudent man would have done in the same circumstances. In this case, the jury is the DD/A.	
25X1A9a	ă.

	TRANSMITTAL SLIP
- 1	3 December 1953
- 1	T0: (Date)
-	Colonel White
	ROOM NO.
	As you point out, it is impossible to make the responsible individual pay, in view of General Counsel's opinion. Therefore, recommend approval of the write-off and signature on the attached memorandum.
	PANA
	ghu
FRO	RDHH
BUIL	DING ROOM NO. EXTENSION
ORM SEP 19	NO. 36-8
	100208-1 GPO